THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 8332 of 1996

Dated: 12.12.2006

Between:

G.Haribabu

… Petitioner

AND

Cement Corporation of India, rep by
Chairman and Managing Director, New Delhi.
And another.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.8332 of 1996

ORDER:-

In this writ petition, the petitioner sought for a writ of mandamus to declare the inaction on the part of the respondents in finalizing his claim on the Voluntary Retirement Scheme and by forcing the petitioner to resign his job as illegal, malafide, discriminatory and unfair labour practice and for a consequential direction to respondents to settle benefits under Voluntary Retirement Scheme together with interest and damages against the officers personally responsible for the delay in finalizing the payments under the Voluntarily Retirement Scheme.

The facts in brief are that the petitioner joined the first respondent organization on 19.1.1981. On completion of 14 years and 8 months service as Stenographer, petitioner made an application on 14.9.1995 to the second respondent to consider his case for voluntary retirement in terms of scheme framed by the first respondent under circular No.PD/PP/1(45)/86 dated 23.3.1992 which was extended up to 31.12.1995. The petitioner alleged that the second respondent who was competent authority to accept voluntary retirement of the cadre of the petitioner accorded approval and directed posting of another

Stenographer in place of petitioner as a measure of internal arrangement. Though the Manager (P&A) informed the said fact on 20.9.1995 to the Director Personal on 13.10.1995 and 28.10.1995 requesting him to release the petitioner, no action was taken to release the petitioner. The petitioner further alleged that the department had obtained a letter dated 1.11.1995 to their dictation to the effect that he resigned from service by withdrawing the application for voluntary retirement. The petitioner also alleged that he was forced to deposit one month salary. According to the petitioner, the act of the department in forcing him to submit his resignation is nothing but an attempt to deny him the benefits under the Voluntary Retirement Scheme.

A counter affidavit is filed on behalf of the respondents wherein it has been stated inter alia that the petitioner's application dated 14.9.1995 seeking voluntary retirement under Voluntary Retirement Scheme was forwarded to the Central Office, New Delhi for consideration vide IOM dated 20.9.1995. As the petitioner's post was a skilled post, an immediate decision could not be taken and even before a decision in this regard was taken, the petitioner submitted his resignation letter on 1.11.1995 requesting the respondents to relieve him from the service of the first respondent Corporation with effect from 1.11.1995 besides withdrawing his option to retire voluntarily under Voluntary Retirement Scheme. On 8.11.1995 the respondents acted on the said request of the petitioner by accepting his resignation letter dated 1.11.1995 relieving him from service with effect from 1.11.1995. The respondents asserted that the petitioner gave his resignation on his own volition and the allegation of obtaining resignation by force was denied. Though the General Manager of the concerned unit recommended for releasing the petitioner under Voluntary Retirement

Scheme, the same was sent to the Corporate Office for its approval as per the notification dated 20.3.1992. It is further alleged that the petitioner having accepted the benefit of acceptance of resignation and having been relieved enabling him to join other service has filed this writ petition without any bona fides and with speculative motive.

I have heard learned counsel for petitioner and Sri P.Nageshwar Sree, learned counsel for the respondents.

The fact that the petitioner's application for the voluntarily retirement under the Voluntarily Retirement Scheme was forwarded by the Second respondent to the Head Office at New Delhi and that it was pending as on 1.11.1995 is not in dispute. It is also not in dispute that the petitioner sent his resignation letter on 1.11.1995 and acting on the said letter the respondents accepted his resignation and relieved him from service with effect from 1.11.1995. The only issue which arises for consideration in this writ petition is whether the petitioner voluntarily gave his resignation letter or the same was obtained by the department misleading the petitioner. The averments made in this regard by the petitioner are wholly bald and vague. All that he has stated in para-5 of his affidavit is as under:

> " I submit that as per the above clause, the benefits have to be released within 30 days from the acceptance. My application has been accepted on 18.9.1995 by the competent authority, ever since I have been kept in dark despite my reminders. Ultimately by misleading me, the department had obtained a letter dated 1.11.1995 to their dictation to the effect that I resigned from service by withdrawing the application for voluntary retirement. I was also forced to deposit one month salary. I submit that the respondents have acted in haste and relieved me. This is nothing but an attempt to deny me the benefits under V.R.Scheme. All officers who have applied for the V.R.Scheme have been relieved in time by paying all the terminal benefits. Only in my case this attitude is adopted. This is nothing but discrimination, class bias and is illegal."

The aforementioned paragraph shows that the petitioner pleaded that "department mislead him and obtained the letter of resignation." The petitioner failed to name the officer who mislead him and obtained the resignation letter. The petitioner also failed to plead the necessity for any officer to mislead him and obtain resignation and to deny him the benefits under Voluntary Retirement Scheme. In any event this is a severely disputed question of fact which cannot be adjudicated by this Court exercising jurisdiction under Article 226 of the Constitution of India. The conduct of the petitioner also does not inspire confidence even to prima facie believe that the petitioner has come out with the truth. If the petitioner was mislead into giving resignation letter he would have immediately reported the same to the higher authorities. He did not do so. While he has sent his resignation letter on 1.11.1995 he filed the present writ petition at his leisure after a lapse of more than five months. This conduct of the petitioner thus suggests that the writ petition is filed as a pure afterthought. Once the petitioner resigned the question of the respondents taking a decision on his application under Voluntary Retirement Scheme does not arise. Therefore, the writ petition filed seeking direction for finalizing his claim under Voluntary Retirement Scheme is wholly misconceived.

For the aforementioned reasons, the writ petition is devoid of merit and hence, the same is dismissed.

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C.V.NAGARJUNA REDDY,J

Date: 12.12.2006
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